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Application No.	Ref.	Date
03 782 845.6 - 2305	E 05106 HATTA	03.04.2009
Applicant: Keio University		

Communication pursuant to Article 94(3) EPC

The examination of the above-identified application has revealed that it does not meet the requirements of the European Patent Convention for the reasons enclosed herewith. If the deficiencies indicated are not rectified the application may be refused pursuant to Article 97(2) EPC.

You are invited to file your observations and insofar as the deficiencies are such as to be rectifiable, to correct the indicated deficiencies within a period

of 4 months

from the notification of this communication, this period being computed in accordance with Rules 126(2) and 131(2) and (4) EPC. One set of amendments to the description, claims and drawings is to be filed within the said period on separate sheets (R. 50(1) EPC).

Failure to comply with this invitation in due time will result in the application being deemed to be withdrawn (Art. 94(4) EPC).

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Rodríguez Cossío, J
Primary Examiner
For the Examining Division

Enclosure(s): 3 page/s reasons (Form 2906)

The examination is being carried out on the **following application documents:**

Description, Pages
1-39 as originally filed

Claims, Numbers
1-24 filed with telefax on 08.12.2008

Drawings, Sheets
1/12-12/12 as originally filed

Reference is made to the following documents; the numbering will be adhered to in the rest of the procedure:

D2: EP-A1-1 101 450
D3: WO 84 00101 A1

1. The present application does not meet the requirements of Article 52(1) EPC because the subject-matter of claim 1 does not involve an inventive step within the meaning of Article 56 EPC.

Document D1 , which is considered to represent the most relevant state of the art, discloses a photodynamic therapy equipment (Fig. 4) comprising: an irradiation means (2) irradiating a pulsed light (p. 16, l. 25) of the wavelength having the potential for activating the photosensitive substance, which is activated by the light having a peak intensity of a predetermined range but is almost not activated by the light having the peal intensity out of the predetermined range, a monitoring means (4) for monitoring the treatment effect (p. 16, ll. 3-9), and a control means (4, 1) controlling the condition of the irradiation of the light irradiated from the irradiation means, wherein the control means controls the activation of the photosensitive substance by changing a irradiation condition of the light based on a result of the monitoring by the monitoring means (p. 16, ll. 3-9), and controls a rate of cell death caused by an action of the activated photosensitive substance in a direction of the depth in the body (claim 3, last sentence: tissue penetration control).
from which the subject-matter of claim 1 differs in that the monitoring means monitors at least one of the amounts of a PDT drug or the oxygen concentration (D1 being silent about how the treatment effect is monitored).

However, these features have already been employed for the same purpose in similar photodynamic therapy equipments like in D2 or D3 as shown below, and are known ways of monitoring the treatment effect as suggested in D1.

Document D2 discloses a photodynamic therapy equipment (14, Fig. 4; §11) comprising: an irradiation means (40) irradiating a pulsed light (p. 3, l. 53) of the wavelength having the potential for activating the photosensitive substance, which is activated by the light having a peak intensity of a predetermined range but is almost not activated by the light having the peal intensity out of the predetermined range (p. 5, l. 48), a monitoring means (42) for monitoring the amounts of a PDT drug (§12), and a control means (44) controlling the condition of the irradiation of the light irradiated from the irradiation means, wherein the control means (44) controls the activation of the photosensitive substance by changing a irradiation condition of the light based on a result of the monitoring by the monitoring means (§18,§36).

Document D3 discloses a photodynamic therapy equipment (Figs. 2,3) comprising: an irradiation means (16) irradiating a pulsed light (p. 7, l. 7) of the wavelength having the potential for activating the photosensitive substance, which is activated by the light having a peak intensity of a predetermined range but is almost not activated by the light having the peal intensity out of the predetermined range, a monitoring means (10,14) for monitoring the amounts of oxygen concentration, and a control means (p. 7, ll. 12-20) controlling the condition of the irradiation of the light irradiated from the irradiation means, wherein the control means controls the activation of the photosensitive substance by changing a irradiation condition of the light based on a result of the monitoring by the monitoring means (claims 17-20; p. 7, ll. 12-20).

It would be obvious to the person skilled in the art, namely when the same result is to be achieved, to implement the oxygen concentration of PDT drug amount monitoring as mean for monitoring the treatment effect according to document D1, thereby arriving at an equipment according to claim 1, in particular since there is no functional interaction between the features of changing an irradiation condition (radiation intensity, frequency...) based on the monitoring results and the depth activation control. The subject-matter of claim 1 does not therefore involve an inventive step (Articles 52(1) and 56 EPC).

2. It is not at present apparent which part of the application could serve as a basis for a new, allowable claim. Should the applicant nevertheless regard some particular matter as patentable, an independent claim should be filed taking account of the objections above. The applicant should also indicate in the letter of reply the difference of the subject-matter of the new claim vis-à-vis the state of the art and the significance thereof.

2.1 The new independent claim should be redrafted in the two-part form in accordance with Rule 43(1) EPC with those features known in combination from the prior art (document D1) being placed in the preamble (Rule 43(1)(a) EPC) and with the remaining features being included in the characterising part (Rule 43(1)(b) EPC).

2.2 When filing amended claims the applicant should at the same time bring the description into conformity with the amended claims. Care should be taken during revision, especially of the introductory portion and any statements of problem or advantage, not to add subject-matter which extends beyond the content of the application as originally filed (Article 123(2) EPC).

2.3 To meet the requirements of Rule 42(1)(b) EPC, the documents D1-D3 should be identified in the description and the relevant background art disclosed therein should be briefly discussed (Guidelines C-II, 4.3).

3. The applicant is requested to file amendments by way of replacement pages, avoiding unnecessary recasting of the description.

The applicant is requested to indicate in detail (page/line) from which parts of the application as originally filed the amendments have been derived (see the Guidelines E-II, 1., last sentence), thus showing that no subject-matter has been introduced which extends beyond the content of the application as filed (Article 123(2) EPC).

The applicant should also take into account of the requirements of Rule 50(1) EPC. In particular, fair copies of the amendments should be filed. If handwritten amendments are submitted, they should be clearly legible for the printer.